IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6267 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DIPAK PRABHUDAS SARVAIYA

Versus

RAJKOT NAGRIK SAHKARI BANK LTD

Appearance:

1. Special Civil Application No. 6267 of 2001

MR PJ KANABAR for Petitioner No. 1

RULE SERVED for Respondent No. 1-6

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 28/06/2002

ORAL JUDGEMENT

The present petition arises against the order, dated 9.7.01 passed by the Gujarat State Cooperative Tribunal below the application for condonation of delay in Appeal No.289/98.

2. The short facts of the case are that the petitioner was one of the defendants in the suit before the Tribunal being Lavad Suit No.1044/95 which was filed by the respondent authority for recovery of amount. The summons appears to have been served by substitute service. Thereafter, the Nominee has passed the final judgment and award dated 3.4.97. It is the case of the petitioner that he was never intimated regarding the final judgment and award in accordance with the Rule 41 (4) of Gujarat Cooperative Societies Rules (hereinafter referred to as "the Rules"). However, when the Special Recovery Officer issued the demand notice for recovery of amount the petitioner came to know about the award passed by the learned Nominee and therefore the petitioner preferred appeal being Appeal No.289/98. In the appeal there was delay of one month and 19 days and therefore the petitioner preferred application for condonation of delay also. The tribunal found that there is no sufficient explanation for delay and therefore the application for condonation of delay was dismissed and the appeal, as a consequence thereof, was also dismissed.

3. Mr.Kanabara appearing for the petitioner submitted that there was no specific intimation given to the petitioner under Rule 41(4) of the Rules regarding final judgment and award passed by the learned Nominee and therefore the limitation can not be said to have begun, but in any event the application for condonation of delay was submitted which has not been properly considered by the tribunal.

4. The respondents are served, but no affidavit in reply is filed nor anybody remained present on behalf of respondents.

5. Rule 41(4) of Gujarat Cooperative Societies Rules reads as under:

"41(4) The decision shall be communicated to the parties by---

(a) pronouncement of the award; or

(b) registered post to any party which may be absent on such date.

6. In view of the above, it was obligatory on the part of the Nominee to communicate to the parties the award by Regd.A.D.post since the petitioner has not appeared after summons and therefore it can not be said

that the limitation has begun, more particularly, when the case of the petitioner is that the petitioner was not intimated at any point of time and he has come to know about the judgment and award of the Nominee only when he received the demand notice from the Special Recovery Officer. The tribunal has totally overlooked the aforesaid aspect and in any case on such ground that the intimation was not given it was just and proper on the part of the tribunal to condone the delay. Since the same is not done, I find that the order passed by the tribunal suffers from nonapplication of mind and the statutory provisions of of the Act and Rules are not taken into consideration while deciding the application for condonation of delay. In any event since no affidavit in reply is filed by the other side regarding intimation given by the Nominee to the petitioner nor anybody has appeared on behalf of respondents and when even it is not found by the tribunal that any such intimation was given I find that the tribunal ought to have condoned the delay.

7. In the result, the order dated 9.7.01 passed by the tribunal below application for condonation of delay in Appeal No.289/98 is quashed and set aside and the tribunal is directed to decide the Appeal No.298/98 on merits after giving opportunity of hearing to both sides.

8. Petition stands allowed and is rule is made absolute to the aforesaid extent. There shall be no order as to costs.

28.6.02 (JAYANT PATEL,J)